

ALLEN, GLAESSNER, HAZELWOOD & WERTH, LLP
180 Montgomery Street, Suite 1200
San Francisco, California 94104

PETER O. GLAESSNER, State Bar No. 93830
pglaessner@aghwlaw.com
LORI A. SEBRANSKY, State Bar No. 125211
lsebransky@aghwlaw.com
ALLEN, GLAESSNER, HAZELWOOD & WERTH, LLP
180 Montgomery Street, Suite 1200
San Francisco, CA 94104
Telephone: (415) 697-2000
Facsimile: (415) 813-2045

Attorneys for Plaintiff and Counterdefendant
SAN FRANCISCO BAY AREA RAPID TRANSIT
DISTRICT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT,

Plaintiffs,

v.

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA, a Connecticut
Corporation,

Defendants.

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA, a Connecticut
Corporation,

Counterclaimant and
Third-Party
Claimant,

v.

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT; SENTINEL
INSURANCE COMPANY LTD., a
Connecticut Corporation; and DOES 1-20,
inclusive,

Counterdefendant
and Third-Party
Defendants.

Case No. 3:15-cv-01313-JSW

**STIPULATION AND [PROPOSED] ORDER
TO AMEND ORDER SCHEDULING TRIAL
AND PRETRIAL MATTERS AS MODIFIED**

RECITALS

Plaintiff/counterdefendant San Francisco Bay Area Rapid Transit District (BARTD), defendant/counterclaimant/third-party claimant/counterdefendant Travelers Property Casualty Company of America, and third-party defendant and counterclaimant Sentinel Insurance Company, LTD, jointly submit this Stipulation to request that the Court modify the August 5, 2015 Amended Order Scheduling Trial and Pretrial Matters by extending the applicable trial and pretrial deadlines by 90 days. The reasons for this request and stipulation are as follows:

1. This coverage dispute arises from a fatal accident that occurred on Saturday, October 19, 2013 on the track between the Walnut Creek and Pleasant Hill BARTD stations. Christopher Sheppard, Manager of BARTD Track & Grounds, and Laurence Daniels, a contractor working for Anil Verma Associates, Inc. ("AVA"), an engineering firm that is insured by Travelers were on the track the afternoon of October 19 when they were struck by a train and killed.

2. Mr. Daniel's heirs have sued BARTD for wrongful death in a civil suit styled, *Amber Daniels, et. al, v. Bay Area Rapid Transit District*, Alameda County Superior Court No. RG14725711. Plaintiffs essentially allege that BARTD negligently failed to protect Mr. Daniels while he was working on tracks during rail car movement.

3. BARTD filed a cross-complaint against AVA in the *Daniels* action for declaratory relief, and for implied and express indemnity and contribution.

4. BARTD is an additional insured under the Travelers policy under some circumstances. BARTD tendered its defense of the *Daniels* lawsuit to Travelers under the additional insured endorsement. Travelers denied that tender. BARTD filed this insurance action to determine whether Travelers has an obligation to defend.

5. Travelers filed a third-party claim against Sentinel Insurance Company, which insured Mr. Daniels' company (Daniels Engineering). By this third-party claim, Travelers contends that should the Court find that Travelers owes BARTD a defense, that defense should be provided by Sentinel, and not by Travelers. Sentinel denies the claims asserted against it and

1 filed a counterclaim for declaratory relief.

2 6. The parties have been working cooperatively to resolve this coverage dispute in
3 the most efficient way possible. In September 2015, BARTD and the insurers attended an initial
4 mediation session in the underlying case. Although some progress was made, the wrongful death
5 claims were not resolved. The parties to this insurance action, however, were able to discuss in
6 principle a potential settlement strategy that would encompass the insurers' defense obligations to
7 BARTD, and BARTD's liability claims against AVA (Travelers' insured), thus resolving the
8 claims involved in this action.

9 7. Unfortunately, settlement progress has been delayed by the wrongful death
10 plaintiffs' efforts to amend their pleadings to assert a survivorship claim (although Mr. Daniels
11 died instantly), which they contend increases the value of their case by several million dollars.
12 Pleading challenges to that claim are currently pending. It will be difficult to engage in
13 productive settlement negotiations encompassing the wrongful death claims until those pleading
14 challenges are resolved. BARTD also has learned about a peripheral issue involving another
15 agency that could potentially affect BARTD's settlement. BARTD is working to sort that issue
16 out now.

17 8. In addition to participation in mediation in the underlying case, BART and the
18 insurers agreed to mediation and have had several telephone conferences with our appointed
19 mediator, Richard Sipos. Mr. Sipos has been a very good resource. The parties and Mediator
20 agree that it makes most sense to resolve the insurance claims in conjunction with mediation of
21 the underlying wrongful death suit.

22 9. Given these circumstances, including the delay in the underlying case, and the
23 parties' continued desire to work toward a global resolution without incurring unnecessary
24 litigation costs, our mediator Mr. Sipos suggested, and the parties agreed, that the parties ask this
25 Court to modify the August 5, 2015 Amended Order Scheduling Trial and Pretrial Matters by
26 extending all deadlines by 90 days.

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STIPULATION

For these reasons, it is hereby stipulated by and between San Francisco Bay Area Rapid Transit District (BARTD), Travelers Property Casualty Company of America, and Sentinel Insurance Company LTD, through their respective counsel of record, subject to the Court's approval, that the current Amended Order Scheduling Trial and Pretrial Matters be modified to extend all deadlines by 90 days. The modified dates are noted in bold:

A. DATES

Jury Trial Date: **Monday, December 12, 2016 at 8:00 a.m.**

Jury Selection: **Wednesday, December 7, 2016 at 8:00 a.m.**

Pre-Trial Conference: **Monday, November 21, 2016 at 2:00 p.m.**

Last Day to Hear Dispositive Motions: ~~Friday, August 12~~
Thursday, August 11, 2016 at 9:00 a.m.

Last day for Expert Discovery: **Thursday, October 27, 2016**

Last day for Expert Disclosure: **Monday, October 3, 2016**

Close of Non-expert Discovery: **Thursday, September 8, 2016**

Deadline to Mediate: **Thursday, April 28, 2016**

The parties appreciate the Court's attention and consideration.

Respectfully submitted,

Dated: January 4, 2016

ALLEN, GLAESSNER,
HAZELWOOD & WERTH, LLP

By: /s/ Lori A. Sebransky
PETER O. GLAESSNER
LORI A. SEBRANSKY
Attorneys for SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

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1 Dated: January 4, 2016

CATES PETERSON LLP

2
3 By: /s/ Mark D. Peterson

4 MARK D. PETERSON

5 Attorneys for TRAVELERS PROPERTY
CASUALTY COMPANY OF AMERICA

6 Dated: January 4, 2016

SMITH ELLISON

7
8 By: /s/ Michael W. Ellison

9 MICHAEL W. ELLISON

10 Attorneys for SENTINEL INSURANCE
COMPANY LTD.

11 **ORDER**

12
13 The parties' stipulation is adopted and IT IS SO ORDERED. AS MODIFIED.

14
15 Dated: January 5, 2016

16
17 
JEFFREY S. WHITE

18 UNITED STATES DISTRICT JUDGE